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## ASSESSMENTS UNDER SECTIONS 153A AND 153C

SECTION 153A : ASSESSMENT IN CASE OF SEARCH AND REQUISITION ;
SECTION 153C : ASSESSMENT OF INCOME OF ANY OTHER PERSON

AMIT KUMAR GUPTA[1]

### Introduction

Search and seizure are two very important arms of Income-tax Department to unearth the undisclosed income. Sections 153A, 153B, 153C and 153D were introduced to specifically address the issue of assessment, in cases of search and seizure by the Finance Act, 2003. Prior to the introduction of these three sections, there was Chapter XIV-B of the Act which took care of the assessment to be made in cases of search and seizure. Such an assessment was popularly known as "block assessment" because the Chapter provided for a single assessment to be made in respect of a period of a block of ten assessment years prior to the assessment year in which the search was made. In addition to these ten assessment years, the broken period up to the date on which the search was conducted was also included in what was known as "block period".

### Provision as per Act

153A(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in

1. Advocate, Delhi High Court, B. Com (H), LL.M, FCA.

respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 ;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate :

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years :

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years ;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years ; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

*Explanation 1.*—For the purposes of this sub-section, the expression 'relevant assessment year' shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

*Explanation 2.*—For the purposes of the fourth proviso, 'asset' shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner :

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

*Explanation*.—For the removal of doubts, it is hereby declared that,—

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section ;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

Search under section 132 is the trigger point of assessment under section 153 and issuance of notice under section 153A is compulsory. From a careful perusal of clauses (a) and (b) under section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year

relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income, which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby, it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. Thus, total income under section 153A covers not only the income emanating from declared sources or any material placed before the Assessing Officer but from all sources including the undeclared ones, or unplaced material before the Assessing Officer.

**Abatement of pending proceedings**

The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says that such revival shall cease to have effect, if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A of the Act. Similarly, sub-section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of the Act is annulled in appeal or any other proceeding.

Thus, on a conspectus of section 153A(1) of the Act, read with the provisos thereto, the legal position that emerges is as under :

(a) the assessments or reassessments, which stand abated in terms of the second proviso to section 153A of the Act, the Assessing Officer acts under his original jurisdiction, for which, assessments have to be made ;

(b) regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material ; and

(c) in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made."

In the case of *Shrikant Mohta* v. *CIT* [2019] 414 ITR 270 (Cal), the Calcutta High Court held that "After initiation of search operations, it is no longer necessary for the assessee to file his regular return by due date notwithstanding the mandate of section 139(1). The obligation to file the return remained suspended, in view of the clear opening words of section 153A(1) till such time that a notice was issued to him under clause (a) of such sub-section. Similarly, the operation of section 139(3) qua the time available for filing a return in order to avail of the benefit of carrying forward any loss stands extended till a return is called for under section 153A(1)(a) and loss can be carried forward".

**Incriminating material**

Under section 153A of the Act, an assessment has to be made in relation to the search or requisition, namely, in relation to material disclosed during the search or requisition. The search operation under section 132 of the Act could be initiated only against a person who is considered to be in possession of undisclosed income or property. Section 153A was not meant to provide a second or a third inning to the Assessing Officer so as to complete a normal scrutiny assessment. The existence of incriminating material is, therefore, a sine qua non for the assumption of jurisdiction under section 153A. This would have to be seen on a year-to-year basis because under the scheme of section 153A, every assessment year is to be taken separately. If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated. When assessment is made on the basis of a search under section 132 or a requisition made under section 132A, the power can only be resorted to, provided any incriminating material is found. Existence of incriminating material is necessary before exercising power under the aforesaid sections.

*Pr. CIT* v. *Dipak Jashvantlal Panchal* [2017] 397 ITR 153 (Guj)

Under section 153A, the assessment should be connected with something found during search and requisition, namely, incriminating material which reveals undisclosed income. As per sub-section (1) of section 153A

of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition.

In the case of *LKS Bullion Import and Export (P.) Ltd.* v. *DGIT* [2014] 3 ITR-OL 196 (Guj) the Gujarat High Court held that on the basis of the record and the reasons noted by the authority, it was not possible to come to the conclusion that the petitioners had not or would not have disclosed the jewellery for the purpose of the Act. Recall that for authorization of search operations under section 132(1)(c) it is required that the competent authority in consequence of the information in his possession has reason to believe that the jewellery, bullion, etc., which represents either wholly or partly income or property has not been or would not be disclosed for the purpose of the Act.

Perusing to documents it is found that the entries of gold distributed to various goldsmiths matched perfectly with the entries of gold ornaments received from such persons after adding alloys for conversion of gold from 24 carat to 22 carat. The so-called discrepancies pointed out by the Revenue in such documents really do not exist.

The respondents fail to notice that the gold ornaments would weight marginally more than the weight of gold from which they are made due to addition of alloys. They also failed to see that such increase in weight was uniform in all cases. Accounts were also maintained regarding labour charges to be paid to different agencies. It can, therefore, not be stated that there was sufficient information in possession of the Director of Income-tax to have reason to believe that such jewellery had not been or would not be disclosed for the purpose of the Act.

There were some discrepancies highlighted by the Department particularly with respect to the agreement dated June 14, 2012. It was argued that such agreement was found in possession of the petitioners and not in possession of the lessee and that the co-relation between the gold actually used in preparation of the ornaments and the one which was available with MG-HUF could not be established but to our mind, these factors would not be sufficient to clothe the authorities with the power to issue search authorization under section 132(1)(c). The Department's doubt about the source of gold of MG-HUF, even if it is genuine, cannot cast any shadow on the question whether the petitioners would or would not have disclosed the same for the purpose of the Act.

Further, the contention that the identity of the gold could not be established also is not a sufficient factor as once the gold was, as claimed by the petitioners, received from MG-HUF and the same was distributed among different goldsmiths for preparation of ornaments, failure to see how the exact identity of the gold or co-relation thereof could be maintained or established. When it was pointed out that the petitioners had maintained voluminous records right from the beginning and when such record was found from the premises of petitioner No. 1-Company, immediately upon the survey operation being conducted, unable to find as how the competent authority could form a reasonable belief that such gold jewellery had not been or would not be disclosed for the purpose of the Act.

On the basis of the various decisions *L. R. Gupta* v. *Union of India* [1992] 194 ITR 32 (Delhi) and *CIT* v. *Vindhya Metal Corporation* [1997] 224 ITR 614 (SC) it emerges that mere possession of money, bullion, jewellery or such valuable article or thing per se would not be sufficient to enable the competent officer to form a belief that the same had not been or would not be disclosed for the purpose of the Act. What is required is some concrete material to enable a reasonable person to form such a belief—thus, the petition is allowed. Search and seizure operation is declared illegal and it is hereby quashed. Consequently, seizure of the gold ornaments under panchnama dated July 26, 2012 is also quashed.

In the case of *Pr. CIT* v. *Meeta Gutgutia Prop. M/s. Ferns 'N' Petals* [2017] 395 ITR 526 (Delhi) it was held that section 153A of the Act is titled "Assessment in case of search or requisition". It is connected to section 132 which deals with "search and seizure". Both these provisions, therefore, have to be read together. Section 153A is indeed an extremely potent power which enables the Revenue to reopen at least six years of assessments earlier to the year of search. It is not to be exercised lightly. It is only if during the course of search under section 132 incriminating material justifying the reopening of the assessments for six previous years is found that the invocation of section 153A qua each of the assessment years would be justified.

In *Smt. Dayawanti* v. *CIT* [2017] 390 ITR 496 (Delhi) the assessees were dealing in the business of pan masala, gutkha, etc. Firstly, the assessees therein were, by their own admission not maintaining regular books of account. Secondly, they also admitted that the papers recovered during the search contained "details of various transactions include purchase/sales/manufacturing trading of gutkha, supari made in cash outside books of account" and they were "actually unaccounted transactions made" by two of the firms of the assessees. Thirdly, the court found as a matter of fact

that the assessees were "habitually concealing income" and that they were "indulging in clandestine operations" and that such persons "can hardly be expected to maintain meticulous books or records for long".

The Hon'ble Gujarat High Court in the case of *Pr. CIT* v. *Dipak Jashvantlal Panchal* [2017] 397 ITR 153 (Guj) has held as under :

> "Section 153A of the Income-tax Act, 1961, bears the heading 'Assessment in case of search or requisition'. The heading of the section can be regarded as a key to the interpretation of the operative portion of the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning. From the heading of the section the intention of the Legislature is clear, viz., to provide for assessment in case of search and requisition. When the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment should be connected with something found during the search or requisition, viz., incriminating material which reveals undisclosed income. Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition".

In the case of *CIT* v. *Jayaben Ratilal Sorathia* wherein it has been held that while it cannot be disputed that considering section 153A of the Act, the Assessing Officer can reopen and/or assess the return with respect to six preceding years ; however, there must be some incriminating material available with the Assessing Officer with respect to the sale transactions in the particular assessment year.

Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition, in case no incriminating material is found, as held by the Rajasthan High Court in the case of *Jai Steel (India)* v. *Asst. CIT* [2013] 1 ITR-OL 371 (Raj), the earlier assessment would have

to be reiterated, in case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act.

In the case of *Pr. CIT* v. *Saumya Construction P. Ltd.* [2016] 387 ITR 529 (Guj) it was held that, no incriminating material was found during the course of search proceedings by the Revenue. However, on the basis of the material which was not found during the course of search, but on the basis of a statement of another person the Revenue made an addition of Rs. 11,05,51,000. In the opinion of this court, in a case like the present one, where an assessment has been framed earlier and no assessment or reassessment was pending on the date of initiation of search under section 132 or making of requisition under section 132A, while computing the total income of the assessee under section 153A of the Act, additions or disallowances can be made only on the basis of the incriminating material found during the search or requisition. In the present case, it is an admitted position that no incriminating material was found during the course of search; however, it is on the basis of some material collected by the Assessing Officer much subsequent to the search, that the impugned additions came to be made. Hence, the Tribunal was correct in deleting the addition.

Various Instructions by Central Board of Direct Taxes

F. No. 286/2/2003-IT (Inv.)

Government of India

Ministry of Finance and Company Affairs

Department of Revenue Central Board of Direct Taxes

Dated March 10, 2003

To,

All Chief Commissioners of Income-tax, (Cadre Contra) and All Directors General of Income-tax (Inv.)

Sir,

Subject : *Confession of additional income during the course of search and seizure and survey operation—Regarding*

Instances have come to the notice of the Board where assessees have claimed that they have been forced to confess the undisclosed

income during the course of the search and seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessees while filing returns of income. In these circumstances, on confessions during the course of search and seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax Departments. Similarly, while recording statement during the course of search, seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidence/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders.

F. No. 286/98/2013-IT (Inv.II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
Dated 18th December, 2014

To,

1. All Principal Chief Commissioners of Income-tax
2. All Chief Commissioners of Income-tax
3. All Directors General of Income-tax (Inv.)
4. Director General of Income-tax (I and CI), New Delhi

Subject : *Admissions of undisclosed income under coercion/pressure during search/survey—Reg*.

Ref : (1) Central Board of Direct Taxes letter F. No. 286/57/2002-IT(Inv. II), dated 3-7-2002

(2) Central Board of Direct Taxes letter F. No. 286/2/2003-IT (Inv. II), dated 10-3-2003

(3) Central Board of Direct Taxes letter F. No. 286/98/2013-IT (Inv. II), dated 9-1-2014

Sir/Madam,

Instances/complaints of undue influence/coercion have come to notice of the Central Board of Direct Taxes that some assessees were

coerced to admit undisclosed income during searches/surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of search/survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the instructions/ guidelines issued by the Central Board of Direct Taxes from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during search/survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during search/survey/ other proceeding under the Income-tax Act, 1961 and/or recording a disclosure of undisclosed income under undue pressure/ coercion shall be viewed by the Board adversely.

4. These guidelines may be brought to the notice of all concerned in your region for strict compliance.

5. I have been further directed to request you to closely observe/ oversee the actions of the officers functioning under you in this regard.

6. This issues with approval of the Chairperson, Central Board of Direct Taxes.

(K. Ravi Ramchandran)

Director (Inv.)-II, CBDT

Department favour : *E. N. Gopakumar* v. *CIT* [2017] 390 ITR 131 (Ker)

Is it necessary that any incriminating material ought to have been unearthed in the search under section 132 of the Act to make any additions to the returns filed by the assessee following notice under section 153A(1)(a) ?

Section 153A is a provision which deals with assessment in case of search or requisition. The activation of a search is not something which is regulated by any limit as to period of time. Even if returns are filed and regular assessments are concluded, search on premises could always be made, if the authority concerned is satisfied that action ought to proceed in

that line. Once that is done, section 153A(1)(a) authorises the issuance of notice calling for filing of returns. This has been noted even under the point decided above. Once a return is filed in answer to such a notice, the *Explanation* to section 153A provides, among other things, that all provisions of the Income-tax Act will apply to the assessment made under section 153A of the Act. This is the manner in which the provisions in sections 153A, 153B and 153C of the Act would regulate. Once that is done, it is well within the jurisdiction of the assessing authority to proceed with any lawful modes of assessment as prescribed in the Act. The statute nowhere makes it conditional that the Department has to unearth some incriminating material to conclude some method against the assessee in events where the assessment is triggered by a notice under section 153A(1)(a) of the Act. This means that even when such notice is triggered following a search, the assessment proceedings can be concluded in any manner known to law, including under section 143(3) or even section 144 of the Act, if need be. Therefore, the assessment proceedings generated by the issuance of a notice under section 153A(1)(a) of the Act can be concluded against the interest of the assessee including making additions even without any incriminating material being available against the assessee in the search under section 132 of the Act on the basis of which the notice was issued under section 153A(1)(a) of the Act.

**Cross-examination of statement**

*CIT* v. *S. M. Aggarwal* [2007] 293 ITR 43 (Delhi)

During the search under section 132 of the Income-tax Act 1961 certain documents indicating advancement of loan of Rs. 22.50 lakhs and receipt of interest of Rs. 3.55 lakhs were found. The assessee explained that these belonged to her married daughter SG. SG denied making any such transactions. The assessee was not granted an opportunity to cross-examine SG. As a result, SG's statement was not an admissible evidence. No amount as "undisclosed income" on basis of those documents could be assessed in his hands.

**Summary of judicial pronouncements**

On a conspectus of section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under :

(i) Once a search takes place under section 132 of the Act, notice under section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for the six assessment years imme-

diately preceding the previous year relevant to the assessment year in which the search takes place.

(ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such assessment years will have to be computed by the Assessing Officers as a fresh exercise.

(iii) The Assessing Officer will exercise normal assessment powers in respect of the six years previous to the relevant assessment year in which the search takes place. The Assessing Officer has the power to assess and reassess the "total income" of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six assessment years "in which both the disclosed and the undisclosed income would be brought to tax".

(iv) Although section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the Assessing Officer, which can be related to the evidence found, it does not mean that the assessment can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this section only on the basis of seized material.

(v) In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word "assess" in section 153A is relatable to abated proceedings (i.e., those pending on the date of search) and the word "reassess" to completed assessment proceedings.

(vi) In so far as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under section 153A merges into one. Only one assessment shall be made separately for each assessment year on the basis of the findings of the search and any other material existing or brought on the record of the Assessing Officer.

(vii) Completed assessments can be interfered with by the Assessing Officer while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search, which were not produced or not already disclosed or made known in the course of original assessment.

*Evidentiary value of loose papers found during search*

*Pradeep Amrutlal Runwal* v. *Tax Recovery Officer* [2014] 47 taxmann.com 293 (Pune-Trib.)

The Assessing Officer made addition in assessee's income on the basis of noting in loose papers found during search proceedings in case of third party against name of assessee as there was no evidence to suggest that payments were made to assessee, additions so made were not justified.

*Deputy CIT* v. *National Standard India Ltd.* [2017] 85 taxmann.com 87 (Mumbai-Trib.)

In case, loose papers seized from premises of assessee company indicating on money receipt on sale of flats did not make any reference to assessee nor same were in any way found to be related or pertaining to assessee, proceedings under section 153C against assessee on basis of said document were unjustified.

**Incriminating material regarding other person**

Section 153C(1) of the Act, which reads as under :

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to ; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person

and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A :

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

> Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated."

It can be observed from the plain and literal interpretation of the provision of section 153C—that once a document is found to be belonging to a person other than the person referred to in section 153A, section 153C is ipso facto attracted and it is automatic that the assessments covered under all the years falling within the mandate of proviso of section 153C(1) read with section 153A(1) get attracted.

Thus, the first and foremost step for initiation of proceedings under section 153C of the Act is for the Assessing Officer of the searched person to be satisfied that the assets or documents seized belong to the assessee (being a person other than the searched person). The Assessing Officer of the assessee, on receiving the documents and the assets seized, would have jurisdiction to commence proceedings under section 153C of the Act. The Assessing Officer of the searched person is not required to examine whether the assets or documents seized reflect undisclosed income. All that is required for him is to satisfy himself that the assets or documents do not belong to the searched person but to another person. Thereafter, the Assessing Officer has to transfer the seized assets/documents to the Assessing Officer having jurisdiction of the assessee to whom such assets/documents belong. Section 153C(1) of the Act clearly postulates that once the Assessing Officer of a person, other than the one searched, has received the assets or the documents, he is to issue a notice to assess/reassess the income of such person—that is, the assessee other than the person searched—in accordance with provisions of section 153A of the Act.

The proviso to section 153C(1) of the Act expressly indicates that reference to the date of initiation of search for the purposes of second proviso to section 153A shall be construed as a reference to the date on which valuable assets or documents are received by the Assessing Officer of an assessee (other than a searched person). Thus, by virtue of the second proviso to section 153A of the Act, the assessments/reassessments that were pending on the date of receiving such assets, books of account or documents would abate.

**Conditions under section 153C**

(i) If the Assessing Officer of the searched person is different from the Assessing Officer of the other person, the Assessing Officer of the searched person is required to transmit the satisfaction note and seized documents to the Assessing Officer of the other person. He is also required to make a note in the file of the searched person that he has done so. However, the same is for administrative convenience and the failure by the Assessing Officer of the searched person to make a note in the file of the searched person, may vitiate the proceedings under section 153C.

(ii) If the Assessing Officer of the searched person and the other person is the same, it is sufficient for the Assessing Officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, the requirement of section 153C is fulfilled. In such case, there can be one satisfaction note prepared by the Assessing Officer, as he himself is the Assessing Officer of the searched person and also the Assessing Officer of the other person.

However, he must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person. In such a situation, the satisfaction note would be qua the other person. The requirement of transmitting the documents so seized from the searched person would not be there as he himself will be the Assessing Officer of the searched person and the other person and, therefore, there is no question of transmitting such seized documents to himself.

*Vijaybhai N. Chandrani* v. *Asst. CIT* [2011] 333 ITR 436 (Guj)

Condition precedent for issuing notice under section 153C and assessing or reassessing income of "such other person" is that money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned should belong to such person ; where, admittedly, documents in question, namely, three loose papers recovered during search proceedings did not belong to petitioner, though there was a reference to the petitioner therein, issue of notice to the petitioner under section 153C was not valid

*Meghmani Organics Ltd.* v. *Deputy CIT* [2010] 6 ITR (Trib) 360 (Ahd)

The prerequisite for initiating proceedings under section 153C of the Act is that any money, bullion, jewellery or other valuable articles or things or documents seized or requisitioned belong to a person other than person in whose case warrant of authorisation is issued under section 132(1) of the Act. Since none of the documents belongs to the assessee, though they

may be referable to the work of the assessee, the same cannot be considered as "belonging to the assessee".

The hon'ble Supreme Court, in *CIT* v. *Sinhgad Technical Education Society* [2017] 397 ITR 344 (SC), has accentuated the relevance of the incriminating material pertaining to the relevant year alone, though in the context of section 153C of the Act. In that case, it has been held that where the incriminating material was found to be pertaining to a particular year, there was no valid satisfaction for the other years.

*Recording of satisfaction note under section 158BD/153C*

In light of the guidelines laid down by the apex court in M/s. Calcutta Knitwears and other similar judicial pronouncements, the Central Board of Direct Taxes vide Circular No. 24 of 2015, dated December 31, 2015 ([2016] 380 ITR (St.) 32) has clarified that the provisions of section 153C are substantially similar/pari materia to the provisions of section 158BD and, therefore, the guidelines of apex court shall apply in respect of assessment of income of other than searched person. The pending litigation with regard to recording of satisfaction note under section 158BD/153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the apex court. The Central Board of Direct Taxes has further clarified that even if the Assessing Officer of searched person and the other person is one and the same, then also he is required to record his satisfaction

*CIT* v. *Gopi Apartment* [2014] 365 ITR 411 (All)

To initiate proceeding against such "other person", recording of satisfaction is required and mandatory even the Assessing Officer of both "searched person" and "other person" is same.

*G. Koteswara Rao* v. *Deputy CIT* [2015] 64 taxmann.com 159 (Visakhapatnam-Trib.)

In case of an assessment made on the assessee consequent to a search in another case, an Assessing Officer is bound to issue notice under section 153C and thereafter proceed to assess income under that section and if the Assessing Officer instead of complying with section 153C proceeded with reassessment under section 147/148, which are not applicable to search cases, the assessment order passed under section 143(3), read with section 147 would be considered illegal, arbitrary and without any jurisdiction.

*ITO* v. *Canyon Financial Services Ltd.* [2018] 91 taxmann.com 252 (SC)

Satisfaction note recorded by Assessing Officer of assessee and Assessing Officer of searched person were identically worded and no reason was recorded as to why satisfaction note of Assessing Officer of assessee was a carbon copy of satisfaction note of Assessing Officer of searched person. It

was held, in above circumstances, proceeding initiated against assessee under section 153C was unjustified.

*CIT* v. *Smt. Soudha Gafoor* [2018] 408 ITR 246 (Ker)

Where the undisclosed income belongs to third party and where the Assessing Officer of the person against whom search is conducted under section 132 and such other person is the same, non-recording of satisfaction as provided under section 158BD would not invalidate the assessment against such other person (Department favour).

In case of *Pr. CIT* v. *Index Securities P. Ltd.* it was held that the documents seized were the trial balance and balance-sheets of the two assessees for the period April 1 to September 13, 2010 (for ISRPL) and April 1 to September 4, 2010 (for VSIPL). Both sets of documents were seized, not from the respective assessees, but from the searched person, i.e., Jagat Agro Commodities (P.) Ltd. In other words, although the said documents might "pertain" to the assessees, they did not belong to them. Therefore, one essential jurisdictional requirement to justify the assumption of jurisdiction under section 153C of the Act was not met in the case of the two assessees.

Also the second jurisdictional requirement, viz., that the seized documents must be incriminating and must relate to the assessment years whose assessments are sought to be reopened, the decision of the Supreme Court in *CIT* v. *Sinhgad Technical Education Society* [2017] 397 ITR 344 (SC) settles the issue and holds this to be an essential requirement. The decisions of this court in *CIT* v. *RRJ Securities* [2016] 380 ITR 612 (Delhi) and *ARN Infrastructure India Limited* v. *Asst. CIT* [2017] 394 ITR 569 (Delhi) also hold that in order to justify the assumption of jurisdiction under section 153C of the Act, the documents seized must be incriminating and must relate to each of the assessment years whose assessments are sought to be reopened. Since the satisfaction note forms the basis for initiating the proceedings under section 153C of the Act, it is futile to contend that this requirement need not be met not only for initiation of the proceedings but also during the subsequent assessment. It was further held that the two seized documents referred to in the satisfaction note in the case of each assessee are the trial balance and balance-sheet for a period of five months in 2010. In the first place, they do not relate to the assessment years for which the assessments were reopened in the case of both assessees. Secondly, they cannot be said to be incriminating. Even for the assessment year to which they related, i.e., 2011-12, the Assessing Officer finalised the assessment at the returned income qua each assessee without making any additions on the basis of those documents. Consequently even

the second essential requirement for assumption of jurisdiction under section 153C of the Act was not met in the case of the two assessees.

This court does not consider it necessary to examine the merits of the case as far as the deletions by the Commissioner of Income-tax (Appeals) of the additions made by the Assessing Officer under section 153C of the Act are concerned. In any event, a detailed analysis has been undertaken by the Commissioner of Income-tax (Appeals) of the materials produced by the assessee which justified the deletion of such additions. Even on this score, no interference is warranted with the impugned order of the Commissioner of Income-tax (Appeals).

*CIT* v. *IBC Knowledge Park (P.) Ltd.* [2016] 385 ITR 346 (Karn)

Materials such as books of account, documents or valuable assets found during a search should belong to a third party which would lead to an inference of undisclosed income of such third party. Such an inference should be recorded by the Assessing Officer having jurisdiction over the searched persons and communicated to the Assessing Officer having jurisdiction over such third party along with the seized documents and other incriminating materials, on the basis of which the Assessing Officer having jurisdiction over such third party would issue notice under section 153C. On receipt of the aforesaid material, the Assessing Officer having jurisdiction over such third party would proceed against the said third party. Thus, where no material belonging to a third party is found during a search, but only an inference of an undisclosed income is drawn during the course of enquiry, during search or during post-search enquiry, section 153C would have no application. Thus, the detection of incriminating material leading to an inference of undisclosed income is a sine qua non for invocation of section 153C of the Act.

*Pr. CIT* v. *Dreamcity Buildwell Pvt. Ltd.* [2019] 417 ITR 617 (Delhi)

In the present case, the Revenue is seeking to rely on three documents to justify the assumption of jurisdiction under section 153C of the Act against the assessee. Two of them, viz., the licence issued to the assessee by the DTCP and the letter issued by the DTCP permitting it to transfer such licence, have no relevance for the purposes of determining escapement of income of the assessee for the assessment years in question. Consequently, even if those two documents can be said to "belong" to the assessee they are not documents on the basis of which jurisdiction can be assumed by the Assessing Officer under section 153C of the Act.

As far as the third document, being annexure A to the statement of Mr. D. N. Taneja, is concerned that was not a document that "belonged" to the assessee. Admittedly, this was a statement made by Mr. Taneja during the

course of the search and survey proceedings. While it contained information that "related" to the assessee, by no stretch of imagination could it be said to a document that "belonged" to the assessee. Therefore, the jurisdictional requirement of section 153C of the Act, as it stood at the relevant time, was not met in the present case.

The legal position in this regard was explained in *Pepsi Foods Pvt. Ltd.* v. *Asst. CIT* [2014] 367 ITR 112 (Delhi), wherein para 6 it was held as under :

> "6. On a plain reading of section 153C, it is evident that the Assessing Officer of the searched person must be 'satisfied' that, inter alia, any document seized or requisitioned 'belongs to' a person other than the searched person. It is only then that the Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or reassess his income in accordance with the provisions of section 153A. Therefore, before a notice under section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is—after such satisfaction is arrived at—that the document is handed over to the Assessing Officer of the person to whom the said document 'belongs'. In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section 132(4A)(i) clearly stipulates that when, inter alia, any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in section 292C(1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or 'satisfaction' that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of 'satisfaction'."

In the course of search of the premises of the CA of the assessee, a hard disk was found. It contained some work sheets for filing the return of the assessee. The Assessing Officer arrived at a finding that the hard disk belonged to the assessee and initiated proceedings under section 153C. On these facts, in *CIT* v. *RRJ Securities Ltd.* [2016] 380 ITR 612 (Delhi), it was held that merely because the hard disk contained some data of the assessee, it could not belong to the assessee. Further, since the hard disk did not contain any incriminating evidence but only working papers, they cannot be the basis for action under section 153C. SLP has been granted by the Supreme Court against this decision in *CIT* v. *RRJ Securities Ltd.* [2017] 393 ITR (St.) 100 (SC).

Section 153B. *Time limit for completion of assessment under section 153A.*—(1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,—

(a) in respect of each assessment year falling within six assessment years referred to in clause (b) of sub-section (1) of section 153A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed ;

(b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed :

Provided that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later :

Provided further that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed and during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA is made, the provisions of clause (a) or clause (b) of this sub-section shall have effect as if for the words "twenty-one months", the words "thirty-three months" had been substituted :

Provided also that in case where during the course of the proceedings for the assessment or reassessment of total income in case of other person

referred to in section 153C, a reference under sub-section (1) of section 92CA is made, the period of limitation for making the assessment or reassessment in case of such other person shall be the period of thirty-three months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twenty-one months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.

(2) The authorisation referred to in clause (a) and clause (b) of sub-section (1) shall be deemed to have been executed,—

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued ; or

(b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorised officer.

(3) The provisions of this section, as they stood immediately before the commencement of the Finance Act, 2016, shall apply to and in relation to any order of assessment or reassessment made before the 1st day of June, 2016.

*Explanation*.—In computing the period of limitation under this section—

(i) the period during which the assessment proceeding is stayed by an order or injunction of any court ; or

(ii) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and—

(a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section ; or

(b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner ; or

(iii) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer ; or

(iv) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee of being reheard under the proviso to section 129 ; or

(v) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission under section 245C and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section ; or

(vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under sub-section (3) of section 245R ; or

(vii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under sub-section (7) of section 245R ; or

(viii) the period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in sub-section (2) of section 153A, till the date of the receipt of the order setting aside the order of such annulment, by the Principal Commissioner or Commissioner ; or

(ix) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less ; or

(x) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer,

shall be excluded :

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in clause (a) or clause (b) of this sub-section available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly :

Provided further that where the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

**Judicial pronouncements**

In *Shanti Lal Godawat* v. *Asst. CIT* [2009] 126 TTJ (Jodh) 135, Income-tax Appellate Tribunal, Jodhpur Bench the assessment order though passed on December 28, 2007 it was despatched to the assessee on January 2, 2008 and, accordingly, served on the assessee. The Tribunal held that the last date of passing the order being December 31, 2007, the assessment orders served on January 2, 2008 were beyond the period of limitation and as such, the assessment orders are non est and ineffective under law. Thus assessment order is not only to be passed but it is also to be served to the assessee within the period of limitation provided under section 153B.

In the case of *Prem Nath Motors P. Ltd.* v. *CST* [1991] 82 STC 124 (Delhi), the hon'ble Delhi High Court has considered the issue whether the assessment order should be barred by limitation just because the demand notice was served on the assessee beyond the time-bar period. Decision is pending.

*CIT* v. *Ulike Promoters (P.) Ltd.* [2013] 356 ITR 507 (Delhi)

Benefit of period of 60 days in terms of proviso to the *Explanation* to section 153B for completing assessment under section 153A can be availed of by Assessing Officer any number of times whenever the situation for it occurs.

**Section 153D – Prior approval necessary for assessment in cases of search or requisition**

The order of assessment/reassessment as specified under section 153A or in respect of assessment year relevant to the previous year in which search is conducted/requisition is made, shall not be made by an Assessing Officer below the rank of Joint Commissioner of Income-tax except with

the prior approval of the Joint Commissioner of Income-tax . However, the above provisions shall not apply where such order is required to be passed by the Assessing Officer with the prior approval of Principal Commissioner of Income-tax or Commissioner of Income-tax under section 144BA(12).

Section 144BA(12) : Where any tax consequences have been determined in the order under the provisions of Chapter X-A [General Anti-Avoidance Rule].

**Some important judicial pronouncements**

The Karnataka High Court, in the case of *Gopal S. Pandit* v. *CIT* [2018] 96 taxmann.com 233 (Karn), held that Addl./Joint Commissioner while granting an approval under section 153D of the Act, to an order to be passed under section 153A of the Act, no opportunity need to be provided to the Appellant. It is not a case where the assessee did not have any opportunity of hearing before any of the authorities to defend his case and some assessment of tax has been made against him fastening the liability of tax against the assessee. Assessing authority as well as the two appellate authorities who have concurrent powers of assessment as are available with the assessing authority, have admittedly heard the assessee on the merits of the case—no substantial question of law in this regard can be said to be arising on the basis of the office guidelines, which are for internal purposes of the Department. They are not even statutory instructions issued under section 119, which if beneficial to assessee have been held to be binding on the authorities of the Department. The assessee has also not been able to point out any prejudice caused to him on account of approving authority not giving him an opportunity of hearing.

In the case of *Pr. CIT* v. *Sunrise Finlease Pvt. Ltd.* the Gujarat High Court held that "As the assessment order has been passed by an Income-tax Officer, the requirement of obtaining the prior approval of the Joint Commissioner under section 153D of the Act was absolute. The Tribunal, however, has recorded a finding of fact that there is nothing on record to indicate that the prior approval of the Joint Commissioner was obtained. As a natural corollary therefore, in the absence of the requirement of prior approval of the Joint Commissioner being satisfied, the whole proceeding would stand invalidated. The Tribunal was, therefore, wholly justified in holding that the impugned order of assessment would stand vitiated in view of non-compliance of the provisions of section 153D of the Act. On this count also, therefore, the appeal, does not merit acceptance".

*Akil Gulamali Somji* v. *ITO* [2012] 20 ITR (Trib) 255 (Pune)

An assessment order under section 153C can be passed by Assessing Officer only after obtaining prior approval under section 154D of the Joint Commissioner.

*Gopal S. Pandith* v. *CIT* [2018] 96 taxmann.com 233 (Karn)

There is no requirement of granting an opportunity of hearing to assessee by the Joint Commissioner prior to giving approval as per section 153D to order of assessment or reassessment under section 153A.

**Penalty in case of search**

Section 153A is in the nature of a second chance given to the assessee, which incidentally gives him an opportunity to make good omission, if any, in the original return. Once the Assessing Officer accepts the revised return filed under section 153A, the original return under section 139 abates and becomes non est. Now, it is trite to say that the "concealment" has to be seen with reference to the return that it is filed by the assessee. Thus, for the purpose of levying penalty under section 271(1)(c), what has to be seen is whether there is any concealment in the return filed by the assessee under section 153A, and not vis-a-vis the original return under section 139.

**Some important cases regarding applicability of penalties during search**

The Punjab and Haryana High Court, in *CIT* v. *Suraj Bhan* [2007] 294 ITR 481 (P&H), held that when an assessee files a revised return showing higher income, penalty cannot be imposed merely on account of such higher income filed in the revised return.

Similarly, in the case of *Bhadra Advancing Pvt. Ltd.* v. *Asst. CIT* [2008] 219 CTR (Karn) 447, the Karnataka High Court held that merely because the assessee has filed a revised return and withdrawn some claim of depreciation, penalty is not leviable. The additions in assessment proceedings will not automatically lead to inference of levying penalty.

In the case of *CIT* v. *Suresh Chand Bansal* [2010] 329 ITR 330 (Cal), the Calcutta High Court held that where there was an offer of additional income in the revised return filed by the assessee and such offer is in consequence of a search action, then if the assessment order accepts the offer of the assessee, levy of penalty on such offer is not justified without detailed discussion of the documents and their explanation which compelled the offer of additional income.

In the case of *S. M. J. Housing* v. *CIT* [2013] 357 ITR 698 (Mad), the Madras High Court held that where after a search was conducted, the assessee filed the return of his income and the Department had accepted such return, then levy of penalty under section 271(1)(c) was not justified.

In the case of *Kirit Dahyabhai Patel* v. *Asst. CIT* [2015] 280 CTR (Guj) 216, the Gujarat High Court held that : "In view of specific provision of section 153A of the Income-tax Act the return of income filed in response to notice under section 153A of the Income-tax Act is to be considered as return filed under section 139 of the Act, as the Assessing Officer has made assessment on the said return and, therefore, the return is to be considered for the purpose of penalty under section 271(1)(c) of the Income-tax Act and the penalty is to be levied on the income assessed over and above the income returned under section 153A, if any".

From the above cases, it would be clear that when an assessee has filed revised returns after search has been conducted, and such revised return has been accepted by the Assessing Officer, then merely by virtue of the fact that such return showed a higher income, penalty under section 271(1)(c) cannot be automatically imposed.

The Supreme Court held, in *T. Ashok Pai* v. *CIT* [2007] 292 ITR 11 (SC), that penalty under section 271(1)(c) is not to be mandatorily imposed. In other words, the levy of penalty under this provision is not automatic. This view has been reiterated in *Union of India* v. *Rajasthan Spinning and Weaving Mills* [2009] 13 SCC 448 to say that for there to be a levy of penalty under section 271(1)(c), the conditions laid out therein have to be specifically fulfilled. Section 271(1)(c) of the Act, being in the nature of a penal provision, requires a strict construction. While considering the interpretation of this provision, this court in *CIT* v. *SAS Pharmaceuticals* [2011] 335 ITR 259 (Delhi), stated that : "It is to be kept in mind that section 271(1)(c) of the Act is a penal provision and such a provision has to be strictly construed. Unless the case falls within the four-corners of the said provision, penalty cannot be imposed. Sub-section (1) of section 271 stipulates certain contingencies on the happening whereof the Assessing Officer or the Commissioner (Appeals) may direct payment of penalty by the assessee." .

Thus, what is required to be judged is whether there has been a "concealment" of income in the return filed by the assessee.